

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 8700
)	
Inventors: Iain James CAMPBELL, <i>et al.</i>)	
)	
Application No.: 10/580,732)	Group Art Unit: 3754
)	
Filed: May 25, 2006)	
)	Examiner: Cartagena, Melvin A
For: Method For Dispensing a Food Product)	

DECLARATION PURSUANT TO 37 C.F.R. § 1.132

I, Iain James Campbell, do hereby declare as follows:

1. I am a scientist currently employed at Unilever in the Ice Foods Global Design Centre, Colworth Park, Sharnbrook, UK. I have a Bachelors degree in Chemistry (1977) from the University of Loughborough and hold the qualification of Chartered Chemist from the Royal Society of Chemistry. I have been employed by Unilever since August 1977, where my field of expertise has been in the area of spreads, edible creams and ice cream. I have worked on a variety of formulation and process orientated research projects concerning emulsions and foams. I have eight patents granted by the U.S. Patent and Trademark Office and 15 papers published in scientific journals. My current job title is Director of the Global Design Centre for Ice Cream.

2. I am a named inventor of US patent application S/N 10/580,732 filed May 25, 2006. I have read and understood the application, as well as the office actions dated August 4, 2009 and March 25, 2010 and our response filed 4 December, 2009, which includes the present claims. I have also read Cornelius US Patent No. 3,233,779 and Malone et al. US patent application Publication No. 2003/0134024 A1 cited in the office actions. The USPTO asserts that it would have been obvious to a person with ordinary skill in the art at the time the invention was made to dispense the frozen aerated food product of Malone in the device of Cornelius.

3. Malone et al. teach frozen aerated confections having an overrun above 80% and below 250%, containing less than 0.5 wt% glycerol, freezing point depressants of between 25% and 37% w/w and between 2 and 12% fat. Malone et al.'s freezing point depressants have a number average molecular weight $\langle M \rangle_n$ of less than 300 and a soft structure when eaten at -18°C. Malone et al. define their freezing point depressants at paragraphs [0010] through [0014] and notes the presence of freezing point depressants in paragraph [0031]. In examples 1-11 the confections were considered to be soft.

4. Cornelius US Patent No. 3,233,779 is directed to an apparatus for dispensing carbonated beverages. Examples of beer, soda pop, root beer, soda water, ginger ale, "cola" drinks, orangeade, and lemon-lime and other citrus and other fruit base beverages are mentioned. Cornelius' invention is directed to a simple method and apparatus wherein equilibrium-type of conditions are artificially created by keeping a carbonic acid solution in a non-saturated condition in the absence of additional CO₂ gas for it to absorb. The carbonated solution is placed in a closed chamber which is variable in size, and pressure is externally supplied by a partially condensed condensable gas. For dispensing, Cornelius includes an elongated hose having a somewhat smaller bore size than is conventional and which is said to be effective due to friction between the hose and the liquid to lower the pressure during the liquid flow gradually along the length of the hose. For a bore size of 0.100 inch, a hose with a length of 18 inches may be used whereas if the diameter is slightly increased to 1/8 inch, a hose of at least 3 feet would be employed. The compressible gas serves the dual functions of maintaining stability of the original carbonation and providing the expelling force needed to dispense the carbonated solution from the container.

5. In my view, the apparatus described by Cornelius would not dispense the frozen aerated product of Malone et al. nor would one of ordinary skill expect it to. Cornelius is concerned with dispensing carbonated beverages and particularly with preventing the beverage's carbonation from going "wild" or "flat." Needless to say, carbonated beverages such as beer are much less viscous than a frozen aerated confection, even one which is designed to be "soft." Cornelius uses a hose having an elongated restriction device. The dimensions indicated by Cornelius for the

length of the hose and the bore diameter would not permit dispensing of a frozen confection such as that described by Malone et al. due to its semi-solid and highly viscous nature. Therefore, one of ordinary skill would not attempt to use the Cornelius apparatus to dispense the Malone et al. product.

6. I further declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Respectfully submitted,

Date: 16th June 2010

By: Iain Campbell